Office-Supreme Court, U.S.
FILED
JUL 16 1966
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1966.

No. 260

MILDRED GIBBONS, NAPOLEON C. ZBYSZEWSKI, AILEEN BIEL, IDA JACOBSON, GEORGE PAPANTONATOS, LEON PERMAN, HYMAN M. STEIN, ALLEN KLEIN, KUNIO SHIMIZO, ET AL.,
Petitioners,

CITY OF CHICAGO, A MUNICIPAL CORPORATION,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

RESPONDENT'S BRIEF IN OPPOSITION.

RAYMOND F. SIMON,
Corporation Counsel of the City of Chicago,
511 City Hall, Chicago, Illinois 60602,
Attorney for Respondent.

SYDNEY R. DREBIN,
ALLEN HARTMAN,
Assistant Corporation Counsel,
Of Counsel.

THE GUNTHORP-WARREN PRINTING COMPANY, CHICAGO 58

INDEX.

	PAGE
Opinion of the Supreme Court of Illinois	1
Statutes and Ordinances Involved	1
Questions Presented	2
Statement of the Case	2
Reasons For Denying the Writ:	
A. Factual determinations involving conflicts in testimony and other evidence are not properly before this Court	8
B. The Illinois Supreme Court's determination upholding the validity and constitutionality of the ordinance regulating self-service, coin-operated laundries is well supported in law and in fact	9
Conclusion	21
Appendix A	i
Appendix B	iii

AUTHORITIES.

Barbier v. Connolly, 113 U. S. 27, 30 19

Carlson v. Curtiss, 234 U. S. 103, 106 9

City of Chicago v. Miller, 27 Ill. 2d 211, 220, 188 N. E. 2d 694, cert. denied, 375 U. S. 11 10

City of Decatur v. Chasteen, 19 Ill. 2d 204, 210, 166 N. E. 2d 29 9

Ferguson v. Skrupa, 372 U. S. 726, 730-31 10

Gibbons v. City of Chicago, 34 Ill. 2d 102, 204 N. E. 2d 70 ..... 1, 5, 8, 13

Goldblatt v. Town of Hempstead, 369 U. S. 590 12

Heard v. Bolton, 107 Ga. App. 863, 866, 867, 131 S. E. 2d 835, 838 19

Kaukas v. City of Chicago, 27 Ill. 2d 197, 203, 188 N. E. 2d 700, cert. denied, 375 U. S. 8 12

Lincoln Federal Labor Union, A.F.L. v. Northwestern Iron & Metal Co., 335 U. S. 525, 536 10

Merchants' Nat'l Bank v. Richmond, 256 U. S. 635, 638 9

Milkwagon Drivers Union v. Meadowmoor Dairies, Inc., 312 U. S. 287, 294 8

Norton Co. v. Department of Revenue of Illinois, 340 U. S. 534, 538 9

Olsen v. Nebraska, 313 U. S. 236, 246 10

Schact v. City of New York, 40 Misc. 2d 303, 243 N. Y. S. 2d 272, 279 18

Schuringa v. City of Chicago, 30 Ill. 2d 504, 509, 198 N. E. 2d 526 9

Soon Hing v. Crowley, 113 U. S. 703 19

Sproles v. Binford, 286 U. S. 374, 388 10

Van Sciver v. Zoning Board of Adjustment, 396 Pa. 646, 656, 657, 152 A. 2d 717, 723, 724 20

Williams v. Mayor and City Council of Baltimore, 289 U. S. 36, 42 10

Statutes:

Illinois Revised Statutes, 1965, Chapter 24,

Par. 1-2-1 ..... 1, 9
Par. 11-1-1 ..... 1, 9
Par. 11-5-2 ..... 1, 9
Par. 11-8-2 ..... 1, 9
Par. 11-16-1 ..... 1, 9
Par. 11-20-5 ..... 1, 9
Par. 11-30-4 ..... 1, 9
Par. 11-42-8 ..... 1, 9
Par. 11-60-1 ..... 1, 9

Ordinances:

Municipal Code of Chicago, 1939, as amended to and including January 1, 1966, Chapter 145

Sec. 145-24.1 ..... 1, 3
Sec. 145-24.2 ..... 1, 3
Sec. 145-24.3 ..... 1, 3, 4, 6
Sec. 145-24.4 ..... 1, 3, 4
Sec. 145-24.5 ..... 1, 3
Sec. 145-24.6 ..... 1, 3

IN THE

Supreme Court of the United States

OCTOBER TERM, 1966.

No. 260.

MILDRED GIBBONS, NAPOLEON C. ZBYSZEWSKI, AILEEN BIEL, IDA JACOBSON, GEORGE PAPANTONATOS, LEON PERMAN, HYMAN M. STEIN, ALLEN KLEIN, KUNIO SHIMIZO, ET AL.,

Petitioners,

CITY OF CHICAGO, A MUNICIPAL CORPORATION,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

RESPONDENT'S BRIEF IN OPPOSITION.

Opinion of the Supreme Court of the State of Illinois.

The opinion of the Supreme Court of the State of Illinois herein has been reported in 34 Ill. 2d 102 and in 214 N. E. 2d 70.

Statutes and Ordinances.

The statutory provisions involved have been set forth as Appendix A and the ordinance provisions involved have been set forth as Appendix B, both located at the back of this brief (hereinafter referred to as "App."). Said provisions are cited in the following list:

Illinois Revised Statutes 1965, Chapter 24, paragraphs 1-2-1, 11-1-1, 11-5-2, 11-8-2, 11-16-1, 11-20-5, 11-30-4, 11-42-8, 11-60-1.

Municipal Code of Chicago 1939, as amended to January 1, 1966, Chapter 145, Sections 145-24.1 through 145-24.6.

References to the Record.

The Abstract of Record filed in the Illinois Supreme Court has been designated by the Clerk of that Court as "Record 26." Therefore, reference to the record contained in said abstract shall be set forth as "Rec. 26," followed by the page in the abstract to which said reference is made.

Questions Presented.

Do regulatory ordinance provisions, founded upon statutory provisions, requiring self-service, coin-operated laundry operators to comply with the city's heating and ventilating code, nuisance code and zoning code; to have an attendant, meeting with certain standards of fitness, on the premises between the hours of 6:00 p.m. and 11:30 p.m.; to close such establishments between 11:30 p.m. to 6:30 a.m.; to submit floor plans of said establishments to the city building department; and to pay a graduated license fee based upon the number of machines installed on the premises, offend Amendments V and XIV of the United States Constitution?

(It must be noted that the ordinance provisions do not require attendants in self-service, coin-operated laundries "during *all* open hours" as stated in petitioners' "Questions Presented" (Petitioners' Brief, pp. 3-4), nor has any issue been raised concerning the desirability of requiring attendants for those establishments seeking to remain open after 11:30 p.m., as stated in petitioners' "Questions Presented" (Petitioners' Brief, p. 4).)

Statement of the Case.

As reproduced in Appendix B of this brief (App. iii-vi), Sections 145-24.1 through 145-24.6 set forth a comprehensive regulatory ordinance concerning the establishment and

use of self-service, coin-operated laundries. Section 145-24.1 requires that self-service, coin-operated laundry establishments comply with the city's ventilating code, that such establishments be maintained so as not to run afoul of the nuisance code of the city, and that they comply with the zoning code of the city. Section 145-24.2 requires that an attendant, *i.e.*, responsible person, be on the premises of self-service, coin-operated laundries during certain hours of operation, namely, between 6:00 p.m. and 11:30 p.m. Section 145-24.3, as amended on April 17, 1964, sets forth certain qualifications which an attendant must possess, said qualifications to be passed upon by the division marshal in charge of the bureau of fire prevention and the commissioner of health, who shall issue a certificate of fitness, with an annual fee established for the issuance or renewal of such a certificate. Section 145-24.4, as amended on April 17, 1964, requires any person establishing a self-service, coin-operated laundry to present plans, specifications and a diagram of the portion of the building in which the proposed laundry establishment is to be located to the commissioner of buildings. Section 145-24.5 provides that no self-service, coin-operated laundry shall be operated between the hours of 11:30 p.m. and 6:30 a.m. Section 145-24.6 provides for an annual license fee graduated in accordance with the number of machines to be installed in self-service, coin-operated laundry establishments.

Petitioners initiated this action against defendant City of Chicago, seeking to set aside Sections 145-24.1 through 145-24.6, alleging that the power to regulate or license self-service, coin-operated laundry establishments had not been conferred upon the City of Chicago by the State Legislature, that said ordinances deprived petitioners of due process of law and of equal protection of the laws (Rec. 26, p. 7), and that said provisions were arbitrary, unreasonable, confiscatory and void, bearing no reasonable relationship

to the public health, welfare or safety (Rec. 26, p. 8). These allegations were denied by respondent (Rec. 26, pp. 23-26). The cause was referred to a Master in Chancery following the entry of a temporary injunction and the Master heard the evidence offered by the parties and filed his report on January 3, 1964 (Rec. 26, p. 30), concluding that the city had the authority to pass the ordinance in question for the regulation of the industry; that it was a necessary ordinance; and that certain provisions in the ordinance were excessive and should be set aside, nevertheless holding that they could be separated from those which were reasonable (Rec. 26, p. 93).

As previously noted, on April 17, 1964, the City Council amended Sections 145-24.3 and 145-24.4 (App. v-vi), said amendments having been designed to meet the Master's objections, which the Chancellor refused to consider prior to entry of the decree (Rec. 26, pp. 105-11), on May 5, 1964 (Rec. 26, p. 97). The Court held that the entire ordinance passed on July 28, 1961 (Sections 145-24.1 through 145-24.6) was void, invalid, unenforceable, beyond respondent's delegated authority and unconstitutional, and permanently enjoined its enforcement (Rec. 26, p. 102).

In support of those ordinance provisions requiring the presence of an attendant during certain hours, to which petitioners make particular reference (Petitioners' Brief, p. 5), the evidence revealed that the requirement of having a responsible person on such premises between 6:00 p.m. and 11:30 p.m. coincided with the busiest hours of operation in self-service, coin-operated laundries (Rec. 26, p. 431), and that those same busy hours also coincided with the hours of peak criminal activity within the City of Chicago at which times the presence of such a responsible person would operate as a deterrent to crime in said laundry establishments (Rec. 26, pp. 440, 441, 458, 459, 467, 468, 539, 541, 556, 563).

The evidence showed further that an attendant would supervise the activities of persons on the premises during those busiest times; would be acquainted with the workings of the machinery; would have some basic knowledge of good housekeeping, thereby nullifying the chance of fire; and would be a person to watch over the premises and the occupants and prevent anything that might occur on those premises that would lead to the jeopardy of the occupants or the building itself which may house apartments or other property uses (Rec. 26, p. 499). Self-service, coin-operated laundries have experienced a number of fires in the City of Chicago (Rec. 26, pp. 206, 247, 248, 249, 270, 295, 323, 333, 337, 367, 370, 379, 381, 401, 414, 576).

An attendant could also eliminate accumulations of water, soap and other debris on the floor (Rec. 26, pp. 533, 593, 594), caused in part by overflowing washing machines (Rec. 26, pp. 180, 190, 217, 224, 269, 270, 271, 307, 323, 349, 364, 383, 389 440, 592). The presence of a properly instructed attendant in self-service, coin-operated laundry establishments would also insure the maintenance of hygienic and sanitary conditions in such establishments as well as to maintain compliance with the ventilation requirements of the Municipal Code of Chicago, particularly where, as in such places of business, gas used for heating is being piped into the premises and where an accumulation of moisture and humidity is to be found (Rec. 26, p. 515).

The Supreme Court of Illinois took cognizance of the fact that there were positive functions to be served by requiring attendants to be on the premises of self-service, coin-operated laundries during their busiest hours in the evening, as required by Section 145-24.2. 34 Ill. 2d 102, 106-08. The Court went on to say that when those positive functions of an attendant relating to considerations of public health, risks of fire and personal injuries are considered *in conjunction* with the deterrence of crime and criminal

activity, both the requirement of an attendant and the closing provision of the ordinance were clearly justified.

The correlation between the deterrence of crime and criminal activity and the presence of attendants during the busiest hours of business in self-service, coin-operated laundries, which also coincide with the peak hours of criminal activity in the City of Chicago (Rec. 26, pp. 441, 467, 539, 556, 563) is demonstrated by the record. With respect to murders involving attendants in self-service, coin-operated laundries (Rec. 26, pp. 472, 541, 559), there is no suggestion or intimation that the persons involved could have qualified as an attendant under Section 145-24.3 of the subject ordinance (App. v), and, in fact, they could have been any person who happened on the premises, such as a janitor or maintenance man (Rec. 26, pp. 445, 451) or a local drifter about whom the operators knew little and cared less (Rec. 26, pp. 578, 580, 582), thereby underscoring the need for appropriate regulation.

It was the considered opinion of expert police witnesses that crimes of larceny would decrease if an attendant were present during the busiest hours of self-service, coin-operated laundry operations, and that an attendant would serve to decrease and deter sex crimes, such as rape, indecent liberties and indecent exposure (Rec. 26, p. 458). The presence of an attendant would also have a deterrent effect upon crimes of murder and robbery, because criminals are less likely to enter such establishments and attempt crimes of this nature where attendants could witness them (Rec. 26, p. 468).

The record shows that women frequently patronize laundromats alone at night and are likely objects for persons bent upon committing sex crimes (Rec. 26, pp. 455, 458, 469, 471, 482, 544, 547, 551-2, 564). Petitioners' assertion that no case of molestation of women occurred at or near self-service, coin-operated laundries (Petitioners' Brief,

p. 7), is belied by the record (Rec. 26, pp. 481, 544, 564). The record also shows an incidence of indecent exposure cases in and about self-service, coin-operated laundries (Rec. 26, pp. 479, 480, 481).

Regarding crimes connected with narcotics in self-service, coin-operated laundries, such establishments have served as gathering places for young people who, seeking to get out of the weather and into warm, well-lighted surroundings where they won't be bothered, have used self-service, coin-operated laundries for "goof-ball" parties. A "goof-ball" is a barbiturate taken orally together with carbonated drinks, which are available in laundromats (Rec. 26, pp. 540, 542). The use of so-called "goof-balls" produces an effect upon the human nervous system as obnoxious as the use of narcotics.

The assertion in petitioners' "Statement of Case" that at least seventy-five percent of the matters set out in the police reports were routine reports of incidents, such as juveniles congregating, which do not constitute crimes at all (Petitioners' Brief, p. 7), omits to advise this Court that the witness used the word "crime" only as related to those cases involving violations of the Criminal Code of Illinois and that the incidents referred to were such violations of city ordinances as required police action (Rec. 26, pp. 458-59).

With respect to petitioners' anticipated increase in the number of burglaries occurring in self-service, coin-operated laundries which would be closed between the hours of 11:00 p.m. and 6:30 a.m., the record shows that self-service, coin-operated laundries are not attractive to burglars (Rec. 26, pp. 566-67). Burglary, in such establishments, in the sense of breaking in from the outside, is very low for the reason that it would be a much more serious offense to pry open the door of the establishment than to break a coin receptacle, the probable proceeds of

which would be minimal in view of the risk (Rec. 26, pp. 545-46). Burglaries are less likely in self-service, coin-operated laundries which are locked and dark because to a thinking burglar, it could be logically assumed that the operator would take home with him the proceeds of the day (Rec. 26, pp. 473-74). The Illinois Supreme Court held that the choice of deterrence of one type of crime at the expense of an increase in another involved a typical legislative judgment, 34 Ill. 2d 102, 109.

Reasons for Denying the Writ.

A. Factual determinations involving conflicts in testimony and other evidence are not properly before this Court.

The main thrust of petitioners' argument, under their "Reasons for Granting the Writ," is their dissatisfaction with the resolution of factual issues by the Master in Chancery and the Illinois Supreme Court. They devote eight of the eleven pages of their argument to analysis and reargument of the facts. (Petitioners' Brief, pp. 8-16.)

This Court has many times held that the place to resolve conflicts in testimony and an interpretation thereof is in the State Court, not in the United States Supreme Court. In *Milkwagon Drivers Union* v. *Meadowmoor Dairies, Inc.*, 312 U. S. 287, the Court addressed itself to similar circumstances, stating 312 U. S. at 294):

> "It is not for us to make an independent evaluation of the testimony before the master. We have not only his findings but his findings authenticated by the state of Illinois speaking through her supreme court. We can reject such a determination only if we can say that it is so without warrant as to be a palpable evasion of the constitutional guaranty here invoked. The place to resolve conflicts in the testimony and in its interpretation was in the Illinois courts and not here. To substitute our judgment for that of the state court is to transcend the limits of our authority."

See also, *Norton Co.* v. *Department of Revenue of Illinois,* 340 U. S. 534, 538; *Merchants' Nat'l Bank* v. *Richmond,* 256 U. S. 635, 638; *Carlson* v. *Curtiss,* 234 U. S. 103, 106. An examination of the testimony in the record, as heretofore set forth in the preceding "Statement of the Case," demonstrates that the findings of fact as posited by the Illinois Supreme Court are well supported by substantial evidence.

As this Court has indicated, therefore, a review of factual issues is not a proper basis for granting a writ of certiorari and respondent respectfully suggests that the petition be denied.

B. The Illinois Supreme Court's determination upholding the validity and constitutionality of the ordinance regulating self-service, coin-operated laundries is well supported in law and in fact.

The authority to regulate laundries has been delegated directly, as well as impliedly, by the Illinois Legislature to municipalities, as demonstrated by the collation of statutory grants of power relating to this subject set forth in Appendix A hereof (Ill. Rev. Stat. 1965, ch. 24, pars. 1-2-1, 11-1-1, 11-5-2, 11-8-2, 11-16-1, 11-20-5, 11-30-4, 11-42-8, 11-60-1) (App. i-ii). Having proceeded from legislative authority, the rule obtains that there is a presumption favoring the validity of the ordinance. *City of Decatur* v. *Chasteen,* 19 Ill. 2d 204, 210, 166 N.E. 2d 29.

The question of whether there is any connection between the ordinance provisions under attack and the police power exercised thereby, and the question of whether the ordinance is a reasonable exercise of that police power, is primarily a matter for legislative determination which will not be disturbed by the courts unless there is a palpably arbitrary exercise of said power. *Schuringa* v. *City of*

Chicago, 30 Ill. 2d 504, 509, 198 N.E. 2d 526. The ordinance provisions need not be scientific, logical or consistent, but need only have a reasonable basis when considered with reference to the purpose of the Legislature. *City of Chicago* v. *Miller,* 27 Ill. 2d 211, 220, 188 N.E. 2d 694, *cert. denied,* 375 U. S. 11. The judicial function in this respect is exhausted with the discovery that the relation between the means and the end is not wholly vain and fanciful or an illusory pretense. *Williams* v. *Mayor and City Council of Baltimore,* 289 U. S. 36, 42.

This Court has recently announced that it has returned to the original constitutional proposition that courts will not substitute their social and economic beliefs for the judgment of legislative bodies which are elected to pass laws. In *Ferguson* v. *Skrupa,* 372 U. S. 726, this Court, quoting from *Olsen* v. *Nebraska,* 313 U. S. 236, 246; *Sproles* v. *Binford,* 286 U. S. 374, 388; and *Lincoln Federal Labor Union, A.F.L.* v. *Northwestern Iron & Metal Co.,* 335 U. S. 525, 536, reaffirmed the principles enunciated in those cases, stating (372 U. S. at 730-31):

> " 'We are not concerned . . . with the wisdom, need, or appropriateness of the legislation.' Legislative bodies have broad scope to experiment with economic problems, and this Court does not sit to 'subject the State to an intolerable supervision hostile to the basic principles of our Government and wholly beyond the protection which the general clause of the Fourteenth Amendment was intended to secure.' It is now settled that States 'have power to legislate against what are found to be injurious practices in their internal commercial and business affairs, so long as their laws do not run afoul of some specific federal constitutional prohibition, or of some valid federal law.' "

Petitioners nevertheless ask this Court to act as a super-legislature, to weigh the wisdom of legislation which, in the *Skrupa* case, this Court said it would emphatically refuse to do. 372 U. S. at 731.

The question of whether there is a reasonable relationship between the ordinance regulating self-service, coin-operated laundries and the traditional objectives of the police power has been decided in favor of the validity and constitutionality of the ordinance by the Illinois Supreme Court. The abstract of record considered by the Illinois Supreme Court is voluminous, containing 599 pages (Rec. 26). The abstract contains testimony of thirty-five witnesses who testified for petitioners, nine witnesses who testified for respondent, in addition to references to six petitioners' exhibits and three respondent's exhibits. The conflict in testimony and other evidence has been resolved by the Illinois Supreme Court in favor of the validity of the ordinance and petitioners' discussion under its "Reasons for Granting the Writ" is no more than a rehash and reargument of that evidence. Nevertheless, respondent will answer various contentions made so that this Court may not be misled thereby.

Petitioners seek mileage from an alleged financial impact said to be caused by the subject ordinance on the business sought to be regulated, the attempt being made to show that theirs are nickel and dime businesses, barely functioning day to day, with imminent loss to themselves and the entire community of the valuable services they are said to render. The record shows, however, that petitioners' type of business, even *without* application of the ordinance regulations at issue, results in such varying circumstances as from three to five such laundry stores closing each week because their owners cannot pay their bills (Rec. 26, p. 428) to those establishments returning to their owners as much of a profit as approximately $10,000 per year (Rec. 26, pp. 171-72). Among the factors bearing upon whether a self-service, coin-operated laundry store will make or lose money is the nature of the neighborhood in which it is located (Rec. 26, pp. 240, 282, 395), the

amount of competition encountered in that particular neighborhood (Rec. 26, pp. 154, 228, 236, 282, 283, 292, 298, 311, 372, 394, 428), the age of the store and the type and maintenance of equipment (Rec. 26, pp. 236, 282, 394), as well as the business practices of the individual entrepreneur (Rec. 26, p. 236). One such operator was frank to admit that he wished to sell his stores because they do not yield sufficient returns on the investment, including stores which show a considerable profit, and that the ordinance provisions under attack had no bearing on this decision which he had made several months prior to passage of the ordinance (Rec. 26, p. 241). A representative of one of the largest laundry equipment suppliers in the industry testified that the new ordinance would have no effect upon his business and that his customers could still make a reasonable profit on their businesses (Rec. 26, p. 291).

The record thus demonstrates that the issue of how the ordinance provisions will affect this industry is enigmatic, to say the least. Notwithstanding the probability of some adverse effect, the fact alone that the ordinance may operate to impose burdens or restrictions on property which would not have existed without the enactment of this provision is not determinative of the question of its validity. *Goldblatt* v. *Town of Hempstead,* 369 U. S. 590; *Kaukas* v. *City of Chicago,* 27 Ill. 2d 197, 203, 188 N. E. 2d 700, *cert. denied,* 375 U. S. 8.

Petitioners assert that no regulation is needed due to the danger of fires or personal injuries, quoting, out of context, a so-called concession to that effect by the Supreme Court of Illinois (Petitioners' Brief, p. 10). Both the record and the Supreme Court opinion are in contradiction of that conclusion. The record shows that a variety of risks to patrons, other occupants of the building, and to property, exist with respect to the operation of machinery and other equipment in self-service, coin-operated laun-

dries, including shorting of electrical wiring and blowing of fuses (Rec. 26, p. 141), fires taking place in and about said machinery (Rec. 26, pp. 194, 201, 203, 206, 247, 248, 249, 270, 295, 323, 333, 337, 367, 370, 379, 381, 401, 414, 576), clogging of machinery (Rec. 26, pp. 216-17), breaking of machine parts accessible to the public (Rec. 26, pp. 249-50, 369), burning out of electrical motors and other electrical equipment (Rec. 26, pp. 369-70), overflowing of water from machines onto the floors (Rec. 26, pp. 180, 190, 217, 224, 269, 270, 271, 307, 323, 349, 364, 383, 389, 430, 530, 592), and malfunctioning of ventilating equipment (Rec. 26, p. 519).

One of respondent's witnesses, Charles L. Pierce, Battalion Chief of the Fire Prevention Bureau of the Chicago Fire Department, stated, in this regard (Rec. 26, p. 507):

> "The point we are concerned about is that it is good fire prevention thinking to have somebody who will recognize a hazard once it starts and to eliminate it if possible, then call in somebody to rectify it.
> "If there is nobody in attendance and the motor is malfunctioning, there is nobody to notify an authority that the motor is malfunctioning, that it is sparking, arcing, or overheated, and so on, until such time as it either burns itself out or causes a fire, then the proper authorities are notified, namely, the owner of the premises. You would not need any particular special knowledge to recognize when the motor was malfunctioning; just be observing to see whether a motor is sparking or arcing, and if you have the God-given sense of smell you could smell a motor burning and you could smell the overheating of it and so on."

The Illinois Supreme Court opinion bears fully upon this point, as follows (34 Ill. 2d 102, 106-08):

> "There appear to be few instances of either fires or personal injuries due to negligence or accident in these establishments, and there has been no difference between attended and unattended laundries in the rates

for insurance against fire and personal injury risks. (See, however, *Schacht* v. *City of New York*, 243 N.Y.S. 2d 272, 279 (1963).) A representative of the Chicago Fire Department testified that there had been fires relating to washers or dryers in such establishments, all of which were contained in the machines. He testified, however, to the great value an attendant would have in curtailing the risks of fire. The main danger of fire appears to derive from failure to remove lint from the dryers or from placing improper materials into them. The main risks of personal injury derive from the fact that some of the machines continue spinning when they are opened while in use. There was also testimony by a manufacturer of driers that he had heard that children climbed inside the machines to see who could stay longest. Some washers have overflowed on occasion, with the consequent risk of injury and, if a wire is frayed or cut, of electrocution. But there was no testimony that any incidents of the latter sort had occurred. Laundry operators testified that there were few overflows, and that the risks relating to maintenance of the machines were cared for adequately by existing maintenance practices.

"If the water is maintained at the proper temperature, a sterilizing effect is achieved. But there was testimony that disease might be communicated if the proper temperature is not maintained or an overload of clothing is placed in the machines. Although the weights of the load limits are announced on the machines, instances of overloading undoubtedly occur. The risks involved here are constant, and the requirement of an attendant during peak business hours appears both reasonably related to those risks and reasonably adapted to curtail them. It seems fair to summarize that attendants during the peak business hours of 6:00 P.M. to 11:30 P.M. would perform few positive business functions other than checking equipment, preventing overloads or the insertion of improper materials, cleaning the premises and changing money if there is no automatic changer, most of which func-

> tions are currently performed to the satisfaction of the operators. But attendants would serve some functions not presently served, for their presence on the premises during the peak business hours, at night, would afford constant assistance and would tend to assure proper use of the machines during those hours."

Petitioners also take liberties with the record when they assert that virtually the only crimes committed in laundromats are instances of malicious mischief affecting only the owner of the premises (Petitioners' Brief, p. 11), and when they remove from context isolated statements of Police Captains and Commanders who testified with respect to crime incidents in their districts (Petitioners' Brief, pp. 12-13). Rather than to analyze the alleged testimony of each and every witness set forth in Petitioners' Brief, which would unduly lengthen and burden this response, a fair example of petitioners' editorial reporting may be observed by considering the testimony of the first witness, Captain James P. Hackett. Captain Hackett, at the time of his testimony, was Commander of the Shakespeare Avenue Police District, who had previously commanded the Task Force in backing up police districts on difficult crime problems, and had commanded four other police districts as well (Rec. 26, pp. 537-38). Upon examination of the record, his alleged statement that "there were no attacks on women in laundromats" (Petitioners' Brief, p. 12) reveals the following (Rec. 26, p. 541):

> "As Commander in my District, I would prefer to have this place with an attendant closed at 2:00 o'clock in the morning; I would prefer to have it closed as far as crime deterrence is concerned, because women are going in there at night and you are always worried somebody will grab one going home. They are open to public view. She is sitting in there. Once in a while we have an occasion where people wander in there and try to strike up an acquaintance with them, and they get ideas. We are always afraid some might

> be attacked going home at late hours. I have not had an incident in this District, *but I have heard of them in the past.* When we were downtown, as Deputy Chief, I watched all crime in the City because the crime [reports] came in to us, every report and on the air. *These types of incidents were reported in the past.*" (Emphasis supplied.)

Captain Hackett also made this statement (Rec. 26, p. 544):

> "One incident at 5900 South Paulina, I think that was the address, *we had a number of women going out of there attacked. We even had a special watch on it.* I think it was on South Ashland Avenue. These incidents occurred to the women after they left the laundromat." (Emphasis supplied.)

With respect to robberies, Captain Hackett testified (Rec. 26, 546):

> "*I know there have been robberies in laundromats,* but I cannot recall anyone in the district I commanded, right off-hand." (Emphasis supplied.)

Captain Hackett is alleged to have testified that the usual type of incident in a laundromat involved kids or drunks trying to get money out of coin receptacles (Petitioners' Brief, p. 12); however, the sentence preceding his comment reveals that this was not the usual incident in a laundromat, but the usual incident involving a *theft* in a laundromat, as follows (Rec. 26, p. 546):

> "The kind of episode that you would have *in a theft,* that you had in a laundromat, would be some kids trying to get $2.00 or $3.00 out of a coin receptacle, or a drunk, drunks hanging out in there who think they could get $2.00 or $3.00 or $10.00 or $15.00 easy. When they get in the coin receptacle we call that a larceny." (Emphasis supplied.)

Captain Hackett also stated, in this regard (Rec. 26, pp. 544-45):

> "In the laundromats, the machines are damaged; they get into their sealed closets; take the money. Most of the crimes are getting into the coin receptacles, into closets for supplies, stealing their supplies, damaging their machines; that is the most in the area I am in now and that is pretty regular."

A fair examination of the record would reveal similar circumstances with respect to the testimony given by each of the police witnesses as compared with the excerpts of their testimony set forth in petitioners' brief (Petitioners' brief, pp. 12-13).

Many of the incidents about which the police officers were examined were contained in a survey covering a limited period of time, from October, 1961 through January, 1962 (Rec. 26, p. 465). For that reason, the police officers, all of whom were in a position to know, testified with respect to their professional experience in addition to the incidents referred to in the survey, and said testimony was by no means in disregard of the record, as petitioners infer (Petitioners' Brief, p. 14). The Illinois Supreme Court opinion with respect to crime and activities requiring police supervision took into consideration the opinions of the police officers, based upon their experience, training, background and knowledge, stating (34 Ill. 2d 102, 108-09):

> "Several representatives of the Chicago Police Department expressed the opinion, based upon their experience, training, background and knowledge, that the presence of an attendant between the hours of 6:00 p.m. and 11:30 p.m. would have a deterrent effect on crimes related to self-service, coin-operated laundries. Reports compiled by the Chicago Police Department show that the peak period of reported crime for this type of laundry increases sharply about 5:00 p.m., reaches a peak sometime after midnight, and decreases sharply after 4:30 a.m. This period correlates with that during which the presence of an attendant and compulsory closing are required under the

ordinance. There was testimony of numerous incidents of crime of varying degrees of seriousness in connection with these laundries. Police officers testified that any warm, well-lighted place would contribute to certain types of crime, but that open, unattended laundries are almost unique in their attractiveness. It was the opinion of the police officers who testified that the incidence of larcenies of coins from the machines would decrease significantly as a result of the attendant and closing requirements. Certain types of prevalent sex crimes, such as indecent liberties and exhibitionism, would also decrease and the danger of rape or similar violent sexual assault on unescorted women would be reduced.

"Over one-half of all police activity in regard to self-service laundries relates to the congregation of juveniles at night. Plaintiffs make much of the fact that this conduct is not in itself criminal. But it is nonetheless a large and important area of legitimate police activity.

"Plaintiffs also argue that the requirements of an attendant will increase the incidence of certain types of crimes, such as sex exhibitionism, by guaranteeing a spectator, and that the closing requirement will increase the incidence of burglary. But the choice of deterrence of one type of crime at the expense of an increase in another involves a typical legislative judgment. We are satisfied upon this record that the attendant and compulsory closing provisions of the ordinance are neither arbitrary nor unreasonable, (see *Kaukas* v. *City of Chicago,* 27 Ill. 2d 197, 201-203; *Queenside Hills Realty Co.* v. *Saxl,* 328 U. S. 80, 90 L. ed. 1096, 66 S. Ct. 850,) and that they do not violate the constitution of Illinois or the constitution of the United States."

The police problems concerning self-service, coin-operated laundries are not limited to Chicago. In the City of New York a similar situation arose and the closing requirements and requirement of an attendant in the New York City ordinance were upheld in *Schact* v. *City of New York,*

40 Misc. 2d 303, 243 N. Y. S. 2d 272, the Court stating (243 N. Y. S. 2d at 279):

> "The Police Department has found the incidents of crime generally to be greatest between the hours of 6 P.M. and 2 A.M.
>
> "It is surely a proper municipal function to take reasonable steps toward the control and reduction of crime, particularly during these hours.
>
> "This Court is unable to say that the city legislative authorities are wholly unreasonable to the point of irrationality in believing that the police and fire problems will be somewhat alleviated by not permitting laundromats—particularly unattended laundromats, though the statute is not so limited—to be open between midnight and 6 A.M., and by requiring that between 6 P.M. and midnight laundromats have someone in attendance."

The closing of business establishments by municipal ordinance, such as laundries, during certain hours of the early morning, was considered by this Court in *Barbier* v. *Connolly*, 113 U. S. 27 and in *Soon Hing* v. *Crowley*, 113 U. S. 703, wherein the San Francisco ordinance prohibiting washing and ironing from 10 P.M. to 6 A.M. was upheld. In the *Barbier* case, this Court stated (113 U. S. at 30):

> "That fourth section, so far as it is involved in the case before the police judge, was simply a prohibition to carry on the washing and ironing of clothes in public laundries and wash houses, within certain prescribed limits of the city and county, from 10:00 at night until 6:00 in the morning of the following day. The prohibition against labor on Sunday is not involved. *The provision is merely a police regulation within the competency of any municipality possessed of the ordinary powers belonging to such bodies.*" (Emphasis supplied.)

Petitioners cite the case of *Heard* v. *Bolton*, 107 Ga. App. 863, 866, 867, 131 S. E. 2d 835, 838, in which an ordinance

of the City of Griffin regulating self-service, coin-operated laundries was under consideration (Petitioners' Brief, pp. 16-17). As indicated in the quotation set forth, "conditions may vary in different communities and circumstances surrounding such an operation may be completely harmless in one city or area and a crime breeding spot in another." The Georgia court cites the *Schact* opinion as an example of the latter type of case. It is respectfully suggested that the problems of cities the size of New York and Chicago may and do differ from a municipality the size of the City of Griffin.

Petitioners also rely upon language appearing in *Van Sciver* v. *Zoning Board of Adjustment,* 396 Pa. 646, 656, 657, 152 A. 2d 717, 723, 724. A careful examination of that opinion, however, reveals that the court there considered a question relating to an application for a variation under the Philadelphia zoning ordinance, under which the Zoning Board imposed the restrictions at issue there. Absent the issue of validity of the comprehensive regulation which is specifically related to the operations of self-service, coin-operated laundries, such as the Chicago provisions, and absent evidence directly related to those issues as is present in the instant case, the quotation set forth by petitioners is obiter dictum.

The opinion of the Illinois Supreme Court herein is correct, being well supported by the facts in the record and by law, and being in consonance with an opinion involving a city the size of New York, which is faced with similar problems, and the petition for writ of certiorari should be denied.

Conclusion.

The ordinance in the instant case reveals a distinct and legitimate legislative purpose designed to meet actual and impending problems relating to self-service, coin-operated laundries. It is neither arbitrary, nor capricious, nor an illusory pretense. That petitioners deem themselves the only parties damaged by reason of the continuing incidents requiring exercise of the police power must not be permitted to restrain the City of Chicago from fulfilling a higher duty which it owes to the entire community. It is fundamental that criminal activities such as are herein involved are wrongs committed against society, not merely the person whose rights of property may have been invaded, and laws designed to prevent such criminal activities are for the protection of the general public. If permitted to continue, successful criminal activity invites imitation, repetition and escalation.

Petitioners fail to show that the opinion of the Illinois Supreme Court is in conflict with applicable decisions of this Court or has decided any Federal question in a way so as to conflict with important questions of Federal law determined by this Court.

Wherefore, respondents respectfully pray that the petition for a writ of certiorari to the Supreme Court of Illinois be denied.

Respectfully submitted,

RAYMOND F. SIMON,
Corporation Counsel of the City of Chicago,
511 City Hall, Chicago, Illinois 60602,
Attorney for Respondent.

SYDNEY R. DREBIN,
ALLEN HARTMAN,
Assistant Corporation Counsel,
Of Counsel.

APPENDIX A.

Provisions of the Illinois Municipal Code (Ill. Rev. Stat. 1965, ch. 24), insofar as they relate to the issues of this case, are as follows:

1-2-1. Ordinances and rules to execute powers—Limitations on punishments.

§-1-2-1. The corporate authorities of each municipality may pass all ordinances and make all rules and regulations proper or necessary, to carry into effect the powers granted to municipalities, with such fines or penalties as may be deemed proper.

11-1-1. Police ordinances.

§ 11-1-1. The corporate authorities of each municipality may pass and enforce all necessary police ordinances.

11-5-2. Riots and disturbances.

§ 11-5-2. The corporate authorities of each municipality may prevent or suppress riots, routs, affrays, noises, disturbances, and disorderly assemblies in any public or private place.

11-8-2. Fire hazards.

§ 11-8-2. The corporate authorities of each municipality may prevent the dangerous construction, installation and condition of chimneys, fireplaces, hearths, stoves, furnaces, pipes, ovens, boilers, fuel conduits, electric wiring and any other fire or heating apparatus used in and about any building, structure, . . . and, if such enumerated are in dangerous condition may cause them to be removed or placed in a safe condition.

11-16-1. Board of health.

§ 11-16-1. The corporate authorities of each municipality may provide for and maintain a board of health, consisting of more than one person, and to prescribe its powers and duties, . . .

11-20-5. Promotion of health.

§ 11-20-5. The corporate authorities of each municipality may do all acts and make all regulations which may be necessary or expedient for the promotion of health or the suppression of diseases, including the regulation of plumbing and the fixtures, materials, design and installation methods of plumbing systems subject to the provisions of the Illinois Plumbing Code Law. . . .

11-30-4. Construction of buildings and fire escapes.

§ 11-30-4. The corporate authorities of each municipality may prescribe the strength and manner of constructing all buildings, structures and their accessories and of the construction of fire escapes thereon.

11-42-8. Breweries—Garages—Shops—House trailers Cabins—Tents—Laundries—Bathing beaches.

§ 11-42-8. The corporate authorities of each municipality may locate and regulate the use and construction of . . . laundries. . . .

11-60-1. Issuance and revocation of licenses.

§1-60-1. The corporate authorities of each municipality may fix the amount, terms, and manner of issuing and revoking licenses.

APPENDIX B.

Sections 145-24.1 through 145-24.6 of the Municipal Code of Chicago, adopted on July 28, 1961, are as follows:

Be It Ordained by the City Council of the City of Chicago:

SECTION 1. Chapter 145 of the Municipal Code of Chicago entitled "Laundries and Laundry Vehicles" is amended by inserting the following new sections in their proper numerical sequence:

Self-Service Coin-Operated Laundry Establishments

145-24.1. Compliance.) Laundry establishments commonly known as self-service coin-operated shall comply with section 81-7, the general applicable provisions of chapter 99, and the provisions of the Chicago Zoning Ordinance.

145-24.2. Attendant.) There shall be present in every self-service coin-operated establishment of this type an attendant between the hours of 6:00 P.M. and 11:30 P.M.

145-24.3. Certificate of fitness.) No person shall act as an attendant in any such laundry establishment, unless he shall be the holder of a certificate of fitness issued by the division marshal in charge of the bureau of fire prevention and the commissioner of health. Before the issuance of any such certificate, the division marshal in charge of the bureau of fire prevention and the commissioner of health shall examine the applicant as to his qualifications to fill such position. To receive a certificate of fitness the applicant must:

(a) be a citizen of the United States;

(b) be of legal age, temperate habits and good moral character;

(c) be able to speak and understand the English language;

(d) produce evidence of his employment or occupation and residence for the previous 2 years;

(e) be familiar with the operation of the machines in the establishment; and

(f) be familiar with risks incident to the operation of the machines and capable of taking the necessary precautions.

The annual fee for the issuance or renewal of any such certificate shall be twelve dollars and shall be paid to the city collector.

Where a self-service coin-operated dry cleaning establishment and a self-service coin-operated laundry establishment are operated on the same premises only one attendant, who is the holder of a certificate of fitness issued pursuant to section 121-13.3 of this code, shall be required.

145-24.4. Plans.) Any person establishing a laundry of the coin-operated self-service type shall be required to submit to the commissioner of buildings for his approval a complete set of plans and specifications of the building in which such establishment is to be located and also a complete diagram of the floor plan of each room to be occupied by such establishment, showing the arrangement or setting of all machinery and equipment to be installed therein. Each such plan shall be explicit and complete.

145-24.5. Hours of operation.) No coin-operated self-service laundry now or hereafter established shall be operated between the hours of 11:30 P.M. and 6:30 A.M.

145-24.6. Fees.) The annual license fee for each self-service coin-operated laundry establishment is hereby fixed as follows: $150.00 for each establishment having fifteen or less self-service coin-operated machines and $5.00 for each machine in excess of fifteen machines maintained upon the premises.

SECTION 2. The last paragraph in Section 145-4 is hereby repealed.

SECTION 3. This ordinance shall become effective September 1, 1961; provided, however, that persons licensed prior to that date shall not be required to pay any further fee for the year 1961 and persons licensed subsequent to effective date hereof shall pay one-third of the fees prescribed herein for the balance of the year 1961.

Amendments to Section 145-24.3 and 145-24.4, adopted April 17, 1964, are as follows:

Be It Ordained by the City Council of the City of Chicago:

SECTION 1. Section 145-24.3 of the Municipal Code of Chicago is amended by striking out subparagraphs (a), (b), (c), (d), (e) and (f) and substituting in lieu thereof the following:

(a) be of legal age, temperate habits and good moral character;

(b) be able to speak and understand the English language;

(c) produce evidence of his employment or occupation and residence for the previous 2 years;

(d) be familiar with the operations of the machines in the establishment; and

(e) be familiar with risks incident to the operation of the machines and capable of taking the necessary precautions.

Also by striking out the sentence following said group of subparagraphs and substituting therefor the following:

Upon compliance with the above and payment to the City Collector of an annual fee of $12.00 for the issuance or renewal of any such certificate, such certificate shall be issued to the applicant.

SECTION 2. Section 145-24.4 of said Code is amended to read as follows:

> Any person establishing a laundry of the coin-operated self-service type shall be required to submit to the commissioner of buildings for his approval a complete set of plans and specifications and a complete diagram of the floor plan of each room to be occupied by such establishment, showing the arrangement or setting of all machinery and equipment to be installed therein. Each such plan shall be explicit and complete.

SECTION 3. This ordinance shall become effective upon its passage and due publication.